

Gas and Electricity Suppliers,
Electricity Distribution Network
Operators,
Gas Transporters and all other
interested parties

Email: solrlevyteam@ofgem.gov.uk

27 September 2024

Last Resort Supply Payment Claim from Octopus Energy Limited

On 31 July 2024, Octopus Energy Limited (“Octopus”) gave notice to Ofgem of its claim for a Last Resort Supply Payment (LRSP) in relation to acting as Supplier of Last Resort (SoLR) to customers of the former UK Energy Hub Incubator Limited (“UKEIH”).

Under Standard Licence Condition (SLC) 9.1 of the Supply Licence, SoLRs are entitled, provided Ofgem consents, to make a claim for a LRSP from each Relevant Gas Transporter and Electricity Distribution Operator. The claim from Octopus included its calculation of the claim amount and information to support the calculation.

This letter sets out the reasons why we are minded-to consent to Octopus claiming a LRSP of up to **£126,232.44**.

We are minded-to consent to Octopus making a claim for costs incurred in complying with a Last Resort Supply Direction¹ relating to:

- financing costs incurred on becoming a SoLR;
- other costs reasonably incurred on becoming a SoLR.

During winter 2021/22 we introduced a number of temporary changes to the LRSP claim process, which were designed to ensure that the SoLR process continues to protect consumers in volatile market conditions. As part of that faster multiple-claim levy process, each of the SoLRs entered into a true-up deed with us. Under this True-up Agreement between Octopus and Ofgem, Initial, Subsequent and final True-up Claims may be made.

We are minded-to consider this claim to be a Subsequent Levy Claim for the purposes of the True-up Agreement. This would mean that the final True-up claim would happen next year, or in the years after. This will enable Octopus to submit additional LRSP claims with supporting evidence for costs that have not yet been approved by Ofgem. As a result of this, under the terms of the True-up Agreement, we will require a final True-up claim to be submitted in the future. In the meantime, we note that obligations under the True-up

¹ [Appointment of Octopus Energy Limited as Electricity Supplier of Last Resort to UK Energy Incubator Hub Ltd | Ofgem](#)
[Appointment of Octopus Energy Limited as Gas Supplier of Last Resort to UK Energy Incubator Hub Ltd | Ofgem](#)

Agreement continue to apply and will remain in place until a final True-up claim has been finalised.

The purpose of this consultation letter is to provide interested parties with an opportunity to make any representations to us, ahead of us making our final decision. We will consider any representations before making our final decision.

In addition, before we make our final decision, we will conduct an additional assurance process in respect of the calculations contained in our minded-to position, the results of which may also be reflected in our final decision.

We expect to make our final decision in November 2024.

Background

The SoLR process

Electricity and gas supply is a competitive activity in Great Britain. While competition has the potential to bring many benefits to consumers, in a competitive market, companies that are not operating efficiently may fail. This applies as much in relation to the gas and electricity supply markets as it does to other markets.

It is Ofgem's statutory duty to protect customers' interests when suppliers fail. When a supplier fails, our focus is to ensure continuity of supply for its customers and to minimise wider negative impacts on the market.

Ofgem can ensure continuity of supply to the failed supplier's customers and minimise these wider negative effects by appointing a SoLR, which is issued with a Last Resort Supply Direction requiring it to supply the failed supplier's customers at very short notice².

Failed Supplier event

On 11 July 2022 we appointed Octopus as the SoLR³ for UKEIH gas⁴ and electricity⁵ customers, following its announcement that it had ceased trading. This followed an appointment process aimed at getting the best deal for consumers. We outlined the material factors behind our decision to appoint Octopus as the SoLR to those customers in our decision letter published on 25 August 2022⁶.

Octopus claim

Octopus indicated at the time of our SoLR appointment process that it would not waive its right to make a claim for LRSP costs and it would claim for working capital and other costs.

² The obligation for a supplier to comply with a LRSD derives from standard licence condition 8 of each supplier's gas and electricity supply licences and is intended to ensure a universal service for Great British energy consumers (for further information on this universal service, see Articles 3(3) of the EU Directives 2009/72/EC and 2009/73/EC).

³ [Ofgem appoints Octopus Energy to take on customers of UK Energy Incubator Hub \(UKEIH\) | Ofgem](#)

⁴ [Appointment of Octopus Energy Limited as Gas Supplier of Last Resort to UK Energy Incubator Hub Ltd | Ofgem](#)

⁵ [Appointment of Octopus Energy Limited as Electricity Supplier of Last Resort to UK Energy Incubator Hub Ltd | Ofgem](#)

⁶ [Appointment of Octopus Energy Limited as Electricity Supplier of Last Resort to UK Energy Incubator Hub Ltd | Ofgem](#)

The initial claim was consented to on 20 December 2022⁷, with a subsequent claim consented to on 14 December 2023.⁸ Consistent with the terms of those consents and the True-up Agreement between the SoLR and Ofgem, we have taken those claims into consideration in reaching our minded-to position on this claim.

Summary of our minded-to decision

Based on the information available and consideration of the circumstances in which the claims for LSRPs by Octopus were consented to, and in accordance with the True-up Agreement in relation to customers of the former UKEIH, Ofgem is minded-to consent to Octopus claiming a LRSP of up to £126,232.44.

Under the Supplier SLCs we are required to consider on a case-by-case basis whether in the circumstances it is appropriate for a SoLR to make a claim for a LRSP. We have set out below our reasons for our minded-to position for this case. This should not be taken as setting a precedent for any future claims, which would also be considered on their merits and on a case-by-case basis, taking into account all relevant circumstances of the particular case.

Table 1: Summary table of initial claim, subsequent claim, and minded-to position on this claim.

Item	Cost	Initial and subsequent Claims Approved	This Claim as Submitted	Deductions on this claim	Minded-to position on This Claim
1	Working Capital	£0	£202,568.05	£76,335.61	£126,232.44
2	Other Costs	£236,558.00	£350,000	£350,000	£0
	Total		£552,568.05	£426,335.61	£126,232.44

Reasons for our minded-to decision

Cost category: Working capital

Our published policy on the temporary multi-claim process⁹ sets out the requirements for SoLRs seeking to claim financing or working capital costs. It also sets out the requirement for SoLRs to demonstrate, with evidence, that their financing cost claim delivers value for money for consumers and is the best possible rate they could achieve given their individual circumstances.

Decision:

Octopus's claim includes £202,568.05 for the cost of working capital. This claim reflects the financing costs associated with wholesale costs; costs Octopus incurred in a period of six months from appointment as SoLR for UKEIH in July 2022. We consented to Octopus recovering these wholesale costs in December 2023.

⁷ [Decision on last resort levy true-up claims | Ofgem](#)

⁸ [Decisions on Last Resort Supply Payment Claims 2023 | Ofgem](#)

The calculation includes costs incurred in the period July 2022 to January 2023, until recovery of those costs started in April 2024, to reflect actual costs incurred and the timescale for the recovery of those costs as set out in our published policy¹⁰.

We consider that the claimed amount is not fully consistent with our criteria, and we are minded-to consent to the claim with the following deductions.

Table 2: Summary of claim and minded-to position for working capital

Item	Cost	Initial and subsequent Claims Approved	This Claim as Submitted	Deductions	Minded-to position on This Claim
1	Working Capital	£0	£202,568.05	£76,335.61	£126,232.44

Rationale for decision:

We are minded-to reduce the rate of interest that Octopus claimed, which we have not included for confidentiality purposes. Octopus submitted an explanation of the rate claimed. However, we are not satisfied that Octopus have provided adequate evidence to demonstrate the rate they faced in respect of working capital costs is reasonable.

The policy decision on last resort levy claims true-up process⁹ explained what would be required for SoLRs to claim for financing or working capital costs incurred. The policy decision also set out the requirement for suppliers to demonstrate, with evidence, that their financing cost claim delivers value for money for consumers and is the best possible rate they could achieve given their individual circumstances.

We have therefore applied a different rate, which we consider is reasonable taking into account our assessment of the costs of financing and broader market conditions. This adjustment results in a reduction of £75,739.46. We are willing to consider any further evidence from Octopus on the rate available to them and the steps taken by them to explore better market rate options.

Furthermore, we are minded-to make minor adjustments to the methodology used by Octopus to calculate its working capital claim. This brings the methodology in line with that published in our templates¹¹ and applied to previous working capital claims from SoLRs. We are also minded-to make an adjustment to the claim to reflect that Octopus started to receive payments from networks for the costs on which the working capital was incurred (the wholesale costs) in April 2024. Octopus’ claim as submitted did not reflect that those payments started in April 2024. Making these adjustments results in a reduction in working capital costs of £596.15.

Cost category: “Other costs”

We understand that other costs may have been incurred when undertaking activities as part of becoming a SoLR (for example, legal fees). We have used the criteria set out in our published decision on the last resort levy claims true-up process¹⁰ to assess whether it is

⁹ [Decision on last resort levy claims true up process \(ofgem.gov.uk\)](https://www.ofgem.gov.uk/decisions/decision-on-last-resort-levy-claims-true-up-process)

¹⁰ [Decision on last resort levy claims true-up process | Ofgem](https://www.ofgem.gov.uk/decisions/decision-on-last-resort-levy-claims-true-up-process)

appropriate for these costs to be recovered through a LRSP. The other costs that Octopus has claimed are detailed below alongside our minded-to position.

Decision:

Octopus’s claim includes £350,000 for ‘Administrator Costs’ associated with acting as a SoLR for former customers of UKEIH. Octopus submitted a claim for these costs in 2023, however, at that time Octopus had not incurred the cost. As we do not allow for LRSP costs which have not yet been incurred by the SoLR we did not approve the cost. Since then, Octopus has incurred the cost and has therefore resubmitted the claim.

The evidence submitted by Octopus shows that there is the possibility that Octopus will get back some of the money should a third-party company, Neo, not be put into liquidation before the end of 2024 (detailed below). In addition, Octopus have not supplied evidence to demonstrate what steps Octopus has taken to avoid the cost or explain why this was the most economical method to pursue. As there exists the possibility that Octopus can get the fee back and Octopus has not fully evidenced the claim we are minded-not to consent to the claim.

Table 3: Summary of claim for “other costs”

Item	Cost	Initial and subsequent Claims Approved	This Claim as Submitted	Deductions	Minded-to position on This Claim
2	Other Costs	£236,558.00	£350,000	£350,000	£0

Rationale for decision:

The £350,000 claim for ‘Administrator Costs’ breaks down into £290,000 for a ‘liquidator’s fee’, to the liquidators of a third-party company associated with UKEIH and a £60,000 fee which was a contribution to the costs of the UKEIH administrators, including legal costs, in pursuing an intercompany claim. The third-party company, Neo, was involved in taking money from former customers of UKEIH, which should have been going to Octopus following Octopus’s appointment as SoLR. Following discussions with the administrators of UKEIH, Octopus decided to act to force the liquidation of Neo in a bid to recover the money Neo had taken from customers of UKEIH. In choosing to act to force the liquidation Octopus has incurred the liquidator and administrator fees which constitute the overall cost.

The evidence Octopus supplied to support the claim states that Octopus can recover the liquidator fee should Neo not be put into liquidation and/or different liquidators from what has been agreed are appointed. If both these conditions are not satisfied by 31 December 2024 then Octopus is entitled to recover the liquidator’s fee of £290,000. As there exists the possibility that both these conditions are not met by the end of 2024 and Octopus could get its money back, it does not yet fully satisfy our criteria of being otherwise unrecoverable.

Additionally, the evidence that Octopus has provided to date has not yet fully demonstrated that this was the most economic method in which to recover the money; or, for example,

that alternative options were considered to ensure that the choice made was best for consumers.

Therefore, we are minded-not to consent to the claim at this time. Octopus may decide to make a future LRSP claim for this cost, which we would assess on its merit using any evidence provided and our assessment criteria.

Next steps

The purpose of this letter is to provide the SoLR and interested parties with an opportunity to make any representations to us, ahead of us making our final decision on this LRSP claim. We invite any representations by 18 October 2024. Responses should be emailed¹¹ to solrlevyteam@ofgem.gov.uk.

We normally publish all responses on our website. However, if you do not wish your response to be made public then please clearly mark it as not for publication. We prefer to receive responses in an electronic form so that they can be placed easily on our website.

We will take into account all relevant information, including any representations we receive, and the results of our internal assurance of our assessment process in reaching our final decision on Octopus' claim. We expect to make our final decision in November 2024.

Yours faithfully,

David Hall
Deputy Director, Financial Resilience and Controls

¹¹ Although we prefer responses in electronic format, responses can be posted to the address below.